

10672-A

RECORDATION NO. Filed 1425

JUL 26 1979 -11 00 AM

MCDONNELL DOUGLAS FINANCE CORPORATION
3855 LAKEWOOD BOULEVARD, LONG BEACH, CALIFORNIA 90846

10672

RECORDATION NO. Filed 1425

JUL 26 1979 -11 00 AM

INTERSTATE COMMERCE COMMISSION
July 25, 1979

HAND DELIVERED

Mrs. Agatha L. Mergenovich
Secretary
INTERSTATE COMMERCE COMMISSION
Washington, D.C. 20423

No.

Date JUL 26 1979

Fee \$ 100.00

ICC Washington, D. C

RECEIVED
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I.C.C.
FEE OPERATION BR.

Dear Mrs. Mergenovich:

Enclosed for filing with and recording by the Interstate Commerce Commission are an original and one copy of a Lease Agreement for railroad cars dated as of July 2, 1979 between North Stratford Railroad Corporation, 126 Main Street, Littleton, New Hampshire 03561, as Lessee, and MDFC Equipment Leasing Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, as Lessor, covering the following railroad equipment:

75 40' General Purpose Rebuilt Boxcars rebuilt by Railway & Industrial Services, Inc.; Road numbers NSRC 425-449, inclusive.

Identifying marks on the foregoing equipment: The words "Ownership subject to documents filed under the Interstate Commerce Act, Section 11303" printed on each side of each unit.

Also enclosed for filing are an original and one copy of a Management Agreement in respect of the above railroad cars, dated as of July 2, 1979, between MDFC Equipment Leasing Corporation, as Owner, and Brae Corporation, Inc., as agent, pursuant to which Brae, has agreed to manage the cars on behalf of MDFC Equipment Leasing Corporation.

Finally, we have enclosed this Company's check in the sum of \$50.00 payable to the Interstate Commerce Commission which we understand is the prescribed fee for filing and recording the foregoing documents.*

Please return the extra enclosed copies with recordation data stamped thereon to the representative of the office of Kunkel Transportation Services, Inc., 425-13th Street, N.W., Suite 523, Washington, D.C. 20004, who will be delivering this letter to you on our behalf.

* Kunkel Transportation Services, Inc.
check for \$50.00 also enclosed.

Very truly yours,

MDFC EQUIPMENT LEASING CORPORATION

By: James M. Mahonias
Its: President

A SUBSIDIARY OF
MCDONNELL DOUGLAS CORPORATION

JMM:tc
Enclosures

MANAGEMENT AGREEMENT

10672 A
RECORDATION NO. 1425

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INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of July 2, 1979, by and between BRAE CORPORATION, a Delaware corporation (hereinafter called "BRAE") and MDFC EQUIPMENT LEASING CORPORATION, a Delaware corporation (hereinafter called "Owner").

WHEREAS, Owner has agreed with BRAE to purchase seventy-five 40' 6" hulks and BRAE has agreed that it will assist Owner in causing the hulks to be rebuilt (such rebuilt hulks, being hereinafter referred to as the "Cars");

WHEREAS, BRAE engages in the business of managing railcars for railcar owners, and Owner desires to retain BRAE as agent for the purposes hereinafter described; and

WHEREAS, the Cars, upon their acceptance by the lessee hereinafter mentioned, will be subject to a Lease Agreement dated as of July 2, 1979 (hereinafter called the "Lease"), between Owner, as lessor, and NORTH STRATFORD RAILROAD CORPORATION, a New Hampshire corporation (hereinafter called the "Lessee"), as lessee;

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and BRAE, intending to be legally bound, hereby agree as follows:

1. Engagement of BRAE. Owner hereby engages BRAE as agent of Owner to perform the management and administrative services with respect to the Cars which are described in Section 3 hereof, all on the terms and conditions set forth herein, and BRAE accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof.

2. Term. The term of this Agreement and the agency created hereby shall commence as of the date of this Agreement and shall continue, unless sooner terminated pursuant to Section 7 hereof, for a term equal to the term (including renewal terms, if any) of the Lease; provided, however, that this Agreement shall terminate with respect to any Car which is lost or destroyed or withdrawn from the Lease pursuant to Section 6C or E of the Lease as of the date that such Car is lost or destroyed or withdrawn from the Lease; provided further, however, that notwithstanding any termination of this Agreement with respect to any Car, BRAE and Owner shall continue to be obligated to fulfill all obligations arising out of events occurring prior to termination of this Agreement.

3. Duties of BRAE. In consideration of the compensation to which BRAE is entitled pursuant to Section 5 hereof, and subject to the agreement of Owner to reimburse and indemnify BRAE pursuant to Section 6 hereof, except as otherwise provided herein, BRAE shall provide and perform on behalf of Owner during the term of this Agreement such management and administrative services as are reasonably necessary to enable Owner to fulfill its obligations as the lessor under the Lease, including without limitation the services set forth below:

(a) To negotiate or approve changes in the specifications applicable to the Cars and in the other terms and conditions in respect of the purchase and rebuilding of the Cars, and generally to monitor the rebuilding process; provided, however, that BRAE shall not agree to an increase in the purchase price of the Cars or rebuilding costs for the Cars without the prior consent of Owner.

(b) Upon tender of the rebuilt Cars, to inspect and

approve such Cars, and if such Cars conform to the specifications ordered and to those set forth in the Lease and to all applicable governmental regulatory specifications, to accept such Cars on behalf of Owner. BRAE shall arrange to move the Cars to Lessee's railroad line as soon after acceptance of delivery by BRAE as is consistent with mutual convenience and economy, and shall pay, on behalf of Owner but subject to Owner's prior approval, any costs which are incurred in effectuating such movement.

(c) Procure and maintain information and records relating to the use of the Cars by Lessee and other railroads in accordance with the Interchange Rules of the American Association of Railroads (AAR), including car hire data, mileage charges, per diem revenues, incentive per diem revenue, and other rental charges or other sums (including insurance benefits or lessee or railroad indemnity payments payable in connection with any damage to or loss or destruction of a Car) with respect to the Cars, payable to Owner under the Lease and use its best efforts on behalf of Owner to collect all such rental charges and other sums which become due and payable to the Owner, and upon receipt thereof to remit the same to the Owner on a monthly basis (net of any expenses which have been incurred by Brae on behalf of Owner pursuant to this Agreement).

(d) Cause the Cars to be registered in the Official Railway Equipment Register and the Universal Machine Language Equipment Register.

(e) Inspect the Cars during the period that they are being rebuilt and during the period that they are subject to the Lease, and arrange for the maintenance and servicing of the Cars, and for all repairs, alterations, modifications or replacements of

parts required to keep and maintain the Cars in good working order in accordance with the Interchange Rules of the AAR and other governmental and regulatory requirements applicable to the Cars, and preventative maintenance necessary to keep and maintain the Cars in good working order and repair; provided, however, that BRAE shall not approve any alterations or modifications of the Cars that in any case, would exceed \$100 per Car, without the prior written consent of Owner.

(f) At Owner's request and expense, cause to be obtained and maintained insurance to protect the interest of Owner in the Cars, in such form and for such amounts as Owner may require (assuming the same is available).

(g) Promptly upon any determination by BRAE that there has accrued a breach of any warranty by the rebuilder or any supplier, subcontractor or other party in respect of the Cars or any parts or components thereof, to give Owner notice in writing of such breach or alleged breach, and assist the Owner in the institution and prosecution of any claim, demand or action arising out of such breach or alleged breach of warranty, all as reasonably requested by, and at the expense of the Owner.

(h) Furnish factual information with respect to all Federal, State, Municipal, Canadian, Provincial and Mexican taxes, governmental charges, assessments or levies, including ad valorem taxes, imposed upon or against the Cars or the acquisition, lease or disposition thereof, other than taxes imposed upon Owner's income or taxes payable by the lessee under the Lease, and maintain records of such taxes, charges, assessments and levies, and all tax returns filed and payments made with respect thereto, and, at Owner's

request, assist Owner, at Owner's expense, in the defense against or contest of, in Owner's name or otherwise, any such taxes, charges, assessments or levies deemed by Owner to be improper.

(i) Monitor and record, and, in the case of Cars used on or off the line of a railroad lessee of the Cars, cause such lessee to monitor and record, movement of the Cars, and maintain, or cause such lessee to maintain, complete and accurate records of all transactions relating to the Cars.

(j) To give to Owner copies of any notice which BRAE shall give or receive under the Lease, except that BRAE shall not give Owner routine car hire reports and similar reports containing accounting data or information as to the movement of the Cars unless otherwise required by Section 9 hereof.

(k) Perform for Owner such other services incidental to the foregoing as may from time to time be reasonably necessary in connection with the leasing and operation of the Cars.

4. Authority, and Limitations on Authority, of BRAE.

(a) It is expressly understood that any actions taken by BRAE on behalf of Owner in accordance herewith will be taken as agent for Owner, either naming Owner or naming BRAE as agent for Owner. BRAE will indemnify Owner and hold Owner harmless from any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses or liabilities incurred by or asserted against Owner as a result of any action taken by BRAE in excess of its authority granted hereby. The parties hereto expressly recognize and acknowledge that this Agreement is not intended to create a partnership, joint venture or other entity between Owner and BRAE. BRAE shall not take any action or engage in any course of dealing

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which would suggest or create any inference that there is any such understanding or agreement between Owner and BRAE; and BRAE shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) BRAE shall not have any authority to (i) offer for sale or lease, or contract or agree to sell or lease, any Cars except as Owner may from time to time in writing hereafter expressly request or direct; or (ii) without the prior written consent of Owner, extend the terms of the Lease or modify, amend or supplement the Lease, or give any consent, waiver, authorization or approval thereunder or, unless otherwise directed by Owner, terminate the Lease or withdraw any Cars from the Lease.

5. Compensation.

(a) Commencement Fee. On the commencement of the Lease term, Owner shall pay to BRAE a sum equal to 2.5% of acquisition and rebuilding costs of the Cars, which costs are currently estimated at \$23,001 per Car.

(b) Management Fee. As compensation to BRAE for the performance of the services hereunder, BRAE shall be entitled to a management fee equal to \$60 per Car per quarter-year, commencing with the day on which such Car becomes subject to the Lease. Additionally, in the event the amount of the allowable straight car hire payments are increased from the amount in effect on the date the Cars become subject to the Lease, BRAE shall be entitled to an additional management fee if, but only if, the Cars averaged better than 90% utilization (as such term is defined in paragraph 6A of the Lease) during the 12-month period preceding the effective date of such increase in allowable straight car hire payments, which additional management

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fee shall be payable until the date of the next adjustment, if any, required pursuant to the terms of this paragraph. Promptly after the effective date of such increase, BRAE and Owner will examine the calculations made pursuant to paragraph 6A and 6B of the Lease to determine whether the Cars met such utilization requirement. The additional management fee payable for each Car will be equal to the then current management fee times the percentage by which the amount of the allowable straight car hire payments were increased from the amount in effect immediately prior to the effective date of such increase. In the event the amount of the allowable straight car hire payments are decreased, the additional management fee payable for each Car will be decreased by a sum equal to the then current management fee times the percentage by which the amount of the allowable straight car hire payments were decreased from the amount in effect immediately prior to the effective date of such decrease. Any changes to the amounts of incentive car hire payments shall have no affect on the additional management fee.

All management fees shall be payable quarterly in arrears only out of the rental payments received in respect of the Cars during the preceding quarter (which amounts may be retained by BRAE from the rentals collected by BRAE as contemplated by this Agreement), and shall be prorated on a daily basis whenever the calculation of such fee is based on a partial quarter-year or a rate in effect for only part of a quarteryear. If the term of this Agreement terminates with respect to any Car, the management fee with respect to such Car shall cease to accrue as of the date of such termination.

6. Payment of Costs and Expenses; Indemnification.

(a) Payment for Maintenance and Repair. The cost of maintenance, service and repair of damage to any Car (other than

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costs which BRAE determines constitute its costs attributable to performing its management and administrative services under this Agreement) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits or railroad or lessee indemnity payments, received to cover the damage to such Car shall be solely for the account and benefit of Owner. Within ten (10) days of receipt by Owner of an invoice therefor, Owner shall pay the invoiced cost of the maintenance, service or repairs that are the responsibility of Owner or, at Owner's election, apply or cause BRAE to apply any insurance or indemnity payments which may be received by BRAE or Owner (as insured or coinsured or additional insured) to cover the cost of any damage which necessitates any such repairs. Nothing contained herein shall impose on BRAE any liability or obligation to Owner or any third party to pay or advance the cost of such maintenance, service or repairs which are the responsibility of Owner.

(b) Payments for Special Improvements. The cost of any alterations, modifications, improvements or additions which are required by the AAR, the Interstate Commerce Commission or the Department of Transportation or other regulatory agency or are otherwise required to comply with applicable laws, regulations or requirements (and which, if required under Section 3(e) hereof, are consented to by Owner) are the sole responsibility of Owner. Owner shall pay the cost thereof within ten (10) days after submission to Owner of the invoice therefor. Nothing contained herein shall impose on BRAE any liability or obligation to Owner or any third party to pay or advance the cost of any such required alterations, modifications, improvements or additions.

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(c) Payments of Uninsured Losses. Losses from third party liability for bodily injury or property damage caused by any Car which are (i) not covered by insurance, including the amount of the deductible or (ii) in excess of the amount of the coverage provided under any liability insurance for bodily injury or property damage on the Cars, are the sole responsibility of Owner. Nothing contained herein shall impose on BRAE any liability or obligation to Owner or any third party to pay or advance the cost of any such liability.

(d) Receipts and Payments as Acts of Owner; Obligations of Owner. In collecting rentals and other sums and carrying out its other duties hereunder, BRAE is acting solely as agent for Owner and any and all sums received by BRAE in such capacity shall be remitted to Owner on a monthly basis. The provisions of this Agreement shall not be understood to diminish or modify the rights of Owner to receive rentals and other sums due or which become due to it under the Lease or the sale or other use or disposition of the Cars.

(e) Indemnification. Owner shall defend (if such defense is tendered to Owner), indemnify and hold BRAE harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses or liabilities incurred by or asserted against BRAE as a result of the use, operation, ownership, delivery, manufacture, possession, control, maintenance, repair or storage of the Cars; provided, however, that Owner shall not defend, indemnify or hold BRAE harmless from and against, and BRAE shall not be exculpated from, any claim, action, damage, expense, loss or liability directly or indirectly caused by or arising from its negligence, bad faith or misconduct.

7. Termination.

(a) If BRAE shall have defaulted in the due performance and observance of any term, covenant or condition to be performed or observed by BRAE under this Agreement, and such default shall have continued for a period of 15 days after Owner shall have notified BRAE in writing thereof or if Lessee shall have defaulted under the Lease and by reason thereof Owner shall exercise its remedies under Section 8 of the Lease, in addition to any other rights or remedies of Owner, Owner shall have the right immediately upon the delivery to BRAE of Owner's election so to do, to terminate this Agreement, whereupon this Agreement shall terminate and be of no further force or effect, except with respect to obligations which have arisen by reason of events occurring prior to such termination.

(b) In addition to its right to terminate under paragraph (a), following the third anniversary of the date of this Agreement, Owner may, without cause, at its option terminate this Agreement and BRAE's agency hereunder by delivery to BRAE of 90 days' prior written notice of such termination, whereupon this Agreement shall terminate and be of no further force or effect, except with respect to obligations which have arisen by reason of events occurring prior to such termination.

(c) Upon any termination pursuant to this Section 7, BRAE shall promptly remit to Owner any rentals or other sums to which Owner is entitled which are then or thereafter in BRAE's possession and turn over to Owner all books, records and accounts maintained by BRAE in the performance of its services hereunder as may be reasonably necessary for Owner to manage and administer, or cause to be managed and administered on its behalf, the Cars. Termination here-

under shall not affect Owner's or BRAE's rights and obligations under any other agreement.

8. Termination of the Lease. The Cars will be leased under the Lease, which may be terminated as to one or more such Cars upon the terms and conditions set forth in the Lease. BRAE shall notify Owner of the occurrence of an event which permits such termination of the Lease with respect to one or more of the Cars promptly but in no event later than three business days after notice by BRAE of such occurrence and shall advise Owner of its recommendations as to the exercise of such right of termination with respect to the Cars. BRAE shall exercise due diligence in keeping itself apprised of the occurrence of such events. Owner shall notify BRAE of its determination whether or not to terminate the Lease with respect to one or more Cars and BRAE, if Owner has elected to so terminate the Lease and so requests, shall, at Owner's expense, assist Owner to effect such termination under the Lease.

9. Reports; Examination of BRAE's Books and Records.

(a) Not later than 30 days after the end of each calendar quarter during the term of this Agreement, commencing with the quarter ending December 31, 1979, BRAE shall furnish to Owner a report showing all rentals and other sums due under the Lease and the amount of all collections thereof, any delinquencies therein and such other information relating to the Cars as Owner may reasonably request.

(b) Owner shall have the right to have an agent or employee of its choice examine and copy, at its sole expense and during normal business hours, the books and records of BRAE relating to the transactions contemplated hereby.

10. Notices. All notices, requests, demands and other communications required hereunder or given pursuant hereto shall be in writing and shall be deemed given on the day deposited in the United States mail, first class mail, with postage prepaid and properly addressed to the other party at its address set forth below, or at such other place as such party may from time to time hereafter designate to such other party in writing:

If to Owner: MDFC Equipment Leasing Corporation
3855 Lakewood Boulevard
Long Beach, California 90846

Attention: Manager/Commercial & Industrial
Financing Department

If to BRAE: BRAE Corporation
Three Embarcadero Center
San Francisco, California 94111

Attention: Vice President - Marketing,
Investor Programs

All such notices, requests, demands or other communications may also be given by telecopier, telex or telegram, provided the same shall be confirmed by letter dispatched on the same date in accordance with the requirements described above. Such notices, requests, demands or other communications shall be deemed given upon actual transmission directed to the recipient party of the telecopy, telex or telegram. Owner's telex number is 67-4357; BRAE's telex number is 17-1472.

11. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed under the laws of the State of California.

(b) Counterparts. This Agreement shall be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) Headings. Titles and headings of the Sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) Amendment. No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that no assignment hereof by Owner or transfer of any of the Owner's rights hereunder, whether by operation of law or otherwise (except an assignment or transfer by Owner to a subsidiary of Owner), shall be valid and effective as against BRAE without the prior written consent of BRAE and, provided, further, that no assignment or transfer by BRAE of its duties hereunder, whether by operation of law or otherwise (except an assignment of this Agreement to a subsidiary of BRAE, provided that BRAE remains liable for the performance of BRAE's obligations hereunder, or in connection with a merger of BRAE or a sale by BRAE of all or substantially all of its assets), shall be valid and effective as against Owner without the prior written consent of Owner.

(f) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including and without limitation acts of God, riots, strikes, fires, storms, public dis-

turbances, or any regulation of any Federal, state or local government or any agency thereof.

(g) Other Cars Owned or Managed by BRAE. It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit BRAE from providing the same or similar services to any person or organization not a party to this Agreement. In particular, BRAE shall be entitled to own and operate for its own account identical cars not managed under this Agreement and/or to manage such cars under a management agreement with another owner.

(h) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(i) Severability. If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

BRAE CORPORATION

By: [Signature]

Its: Vice President - Investor Program

MDFC EQUIPMENT LEASING CORPORATION

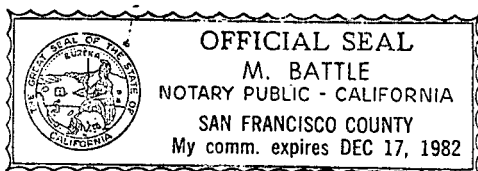
By: [Signature]

Its: WESTERN REGION MANAGER

State of California]
County of San Francisco] ss.

On this 16th day of July, 1979, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jerry A. Riiser, known to me to be the Vice President of BRAE CORPORATION, the Corporation that executed the within Instrument, known to me to be the person who executed the within Instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

Witness my hand and official seal.

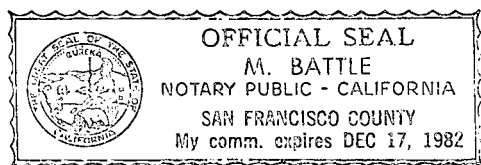


M. Battle
Notary Public in and for said State

State of California]
County of San Francisco] ss.

On this 16th day of July, 1979, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Thomas Zambach, known to me to be the Western Regional Mgr. of MDFC EQUIPMENT LEASING CORPORATION, the Corporation that executed the within Instrument, known to me to be the person who executed the within Instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

Witness my hand and official seal.



M. Battle
Notary Public in and for said State